

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

VetBridge Product Development Subsidiary I)	
(NM-OMP), LLC,)	
)	
Plaintiff,)	Case No. 5:18-CV-06147-BCW
)	
vs.)	
)	
NewMarket Pharmaceuticals, LLC,)	
)	
Defendant.)	

DECLARATION OF GREER S. LANG

I, Greer S. Lang, being over the age of 18, under the penalties of perjury, state as follows:

1. My name is Greer S. Lang. I am a partner in the law firm of Lathrop Gage LLP and lead counsel for the plaintiff, VetBridge Product Development Subsidiary I (NM-OMP), LLC (“VetBridge”), in this action. In that capacity, I have personal knowledge of the facts stated herein.

2. As counsel for VetBridge, I electronically filed VetBridge’s Verified Petition with the Circuit Court of Buchanan County on August 29, 2018. Exhibit A to VetBridge’s Verified Petition was a copy of the July 27, 2014 Exclusive Distribution Agreement (“Agreement”) between VetBridge and NewMarket Pharmaceuticals, LLC (“NewMarket”).

3. Attached hereto as **Exhibit A** is a true and correct copy of a September 6, 2018 email I sent to Mark Ridall at m.ridall@aborisah.com; m.ridall@newmarketpharma.com, together with the Microsoft delivery receipt, a Microsoft notice indication that delivery to the email address m.ridall@newmarketphara.com failed, and the attachments, which included the Summons, Verified Complaint, Ex Parte Motion for a Temporary Restraining Order (“TRO”), and a Certified Copy of the Ex Parte Temporary Restraining Order the Circuit Court entered on September 5, 2018. Because NewMarket is currently seeking to place the Agreement under seal, I have included only the first page (redacting everything but the introductory paragraph), and the signature pages.

4. Attached hereto as **Exhibit B** is a true and correct copy of a September 7, 2018 letter NewMarket’s counsel, Joel A. Pisano of Walsh Pizzi O’Reilly Falanga LLP, filed in the case styled *NewMarket Pharmaceuticals, LLC v. VetPharm, Inc.*, Case No. 3:17-cv-01852 (the “New Jersey Action”), with the attachments thereto, including a copy of the TRO.

5. NewMarket’s counsel did not provide me with a copy of Mr. Pisano’s letter (**Exhibit B**) at the time it was filed in the New Jersey Action. Nor did they contact me to advise that it was their position that the Agreement was confidential or to request that it be placed under seal. The first time NewMarket’s counsel said anything to that effect was at the September 14 hearing—seven days after they first learned that the Agreement was attached as an exhibit to the Verified Petition and had been publicly filed—when Mr. Pollaro and NewMarket’s local counsel, Aimee Davenport (of Stinson Leonard Street LLP) appeared in court.

6. At the preliminary injunction hearing in the Circuit Court, because certain of the testimony to be offered during that hearing would potentially disclose “Confidential Information” under the terms of the Agreement, out of an overabundance of caution, I requested that the hearing itself be conducted in a closed courtroom, so that the parties would have the opportunity, once the transcript was available, to designate those portions they claimed were confidential under the Agreement.

7. Following the hearing in the Circuit Court on September 14, 2018, I prepared a proposed Amended Temporary Restraining Order (“Amended TRO”) at the direction of the Circuit Court, and emailed a copy of the same to NewMarket’s counsel, Robert Pollaro and Aimee Davenport. Neither Mr. Pollaro nor Ms. Davenport notified me of any objections to the contents of the Amended TRO, nor did they request that the same be placed under seal.

8. Attached hereto as **Exhibit C** is a true and correct copy of NewMarket’s Notice of Motion to Seal and attachments, including the Declaration of Joel A. Pisano in Support of Motion, Proposed Findings of Fact and Conclusions of Law in Support of Motion to Seal, Statement in Lieu of Brief Pursuant to Local Civil Rule 7.1(D)(4) and [Proposed] Order (Doc. 93), filed in the New Jersey Action on September 26, 2018. According to the Docket Sheet in that action on PACER at https://ecf.njd.uscourts.gov/cgi-bin/DktRpt.pl?318976243552462-L_1_0-1 that motion was not opposed by VetPharm, Inc. (“VetPharm”), the only other party to that action.


9. Attached hereto as **Exhibit D** is a true and correct copy of the ~~[Proposed]~~ Order (Doc. 97) entered by the New Jersey Court on October 30, 2018, granting NewMarket’s motion to permit the Agreement to be filed under seal in that action.

10. At the time NewMarket removed the Circuit Court action to this Court, and even as of today, NewMarket has never moved this Court to place any of those pleadings or orders under seal. Nor has it done so in the Circuit Court; though those pleadings and orders are still accessible to the public through case.net at <https://www.courts.mo.gov/casenet/base/welcome.do>.

11. Attached hereto as **Exhibit E** is a true and correct copy of an email string between Mr. Pollaro and myself (between October 19 and October 24) regarding Mr. Pollaro’s request that I take steps to place the copy of the Agreement attached to VetBridge’s October 19, 2018 Suggestions in Support of Motion to Schedule a Hearing on its Preliminary its Preliminary Injunction Motion (“Motion for Hearing”) (Doc. 13-1) under seal, my explanation of why VetBridge did not believe the Agreement was entitled to confidential treatment, both under the Agreement’s express terms and based upon NewMarket’s voluntary filings and disclosures, as well as my requests that Mr. Pollaro explain the basis for his position and how my analysis was in error.

I make this declaration under penalty of perjury under the laws of the United States and the laws of the State of Missouri.

Dated: November 14, 2018



Greer S. Lang

Lang, Greer S.

From: Lang, Greer S.
Sent: Thursday, September 06, 2018 10:35 AM
To: m.ridall@aborisah.com; m.ridall@newmarketpharma.com
Cc: Stahl, Thomas
Subject: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640
Attachments: 2018-08-29_Ex Parte Motion for Temporary Restraining Order.pdf; 2018-08-29_Summons for Personal Service Outside the State of Missouri.pdf; 2018-08-29_Verified Petition for Damages, Specific Performance & Injunctive Relief.pdf; 2018-09-04 TRO_Certified.pdf

Mr. Ridall,

This firm represents VetBridge Product Development Subsidiary I (NM-OMP), LLC. Please see the attached, which were filed in and issued from Circuit Court of Buchanan County, Missouri on August 29, 2018:

1. Summons,
2. Verified Petition for Damages, Specific Performance and Injunctive Relief, and
3. Corrected Ex Parte Motion for a Temporary Restraining Order.

Additionally, we are attaching the Temporary Restraining Order entered by the Court on September 5, 2018, which enjoins and restrains NewMarket Pharmaceuticals, LLC and the persons and conduct described therein. **Please note that VetBridge's motion for a preliminary injunction, as requested in its Verified Petition, has been set for a hearing in the Circuit Court of Buchanan County, Missouri, Division 1, at 9:30 a.m. on September 14, 2018.**

Greer S. Lang
Partner



Lathrop Gage LLP
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108-2618
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lathropgage.com

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Lang, Greer S.

From: Microsoft Outlook
To: m.ridall@aborisah.com; m.ridall@newmarketpharma.com
Sent: Thursday, September 06, 2018 10:36 AM
Subject: Relayed: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

m.ridall@aborisah.com (m.ridall@aborisah.com)

m.ridall@newmarketpharma.com (m.ridall@newmarketpharma.com)

Subject: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640

From: postmaster@newmarketpharma.com
To: m.ridall@newmarketpharma.com
Sent: Thursday, September 06, 2018 10:38 AM
Subject: Undeliverable: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640

Delivery has failed to these recipients or groups:

m.ridall@newmarketpharma.com

This message was rejected by the recipient email system. Please check the recipient's email address and try resending this message, or contact the recipient directly.

Diagnostic information for administrators:

Generating server: SN6PR05MB4816.namprd05.prod.outlook.com

m.ridall@newmarketpharma.com
Remote Server returned '< #5.1.10 smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient m.ridall@newmarketpharma.com not found by SMTP address lookup>'

Original message headers:

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(2603:10b6:805:9b::30) with Microsoft SMTP Server (version=TLS1_2,
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2018 15:37:42 +0000
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Authentication-Results: spf=pass (sender IP is 67.231.157.70)
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From: "Lang, Greer S. (LG)" <glang@lathropgage.com>
To: "m.ridall@aborisah.com" <m.ridall@aborisah.com>,
"m.ridall@newmarketpharma.com" <m.ridall@newmarketpharma.com>
CC: "Stahl, Thomas (LG)" <tstahl@lathropgage.com>
Subject: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640
Thread-Topic: VetBridge Product Development Subsidiary I (NM-OMP), LLC v. NewMarket Pharmaceuticals, LLC, Case No. 18BU-CV03640
Thread-Index: AdRF9xKN8FYNOR4ZTwakfFTVaEQy0w==
Disposition-Notification-To: "Lang, Greer S. (LG)" <glang@lathropgage.com>
Return-Receipt-To: <glang@lathropgage.com>
Date: Thu, 6 Sep 2018 15:35:01 +0000
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IN THE 5TH JUDICIAL CIRCUIT, BUCHANAN COUNTY, MISSOURI

Judge or Division: MELISSA M LAWYER	Case Number: 18BU-CV03640
Plaintiff/Petitioner: VETBRIDGE PRODUCT DEVELOPMENT SUBSIDIARY I (NM-OMP), LLC	Plaintiff's/Petitioner's Attorney/Address: GREER SHIRREFFS LANG 2345 GRAND BLVD SUITE 2400 KANSAS CITY, MO 64108
Defendant/Respondent: NEWMARKET PHARMACEUTICALS, LLC	Court Address: BUCHANAN CO COURTHOUSE 411 JULES ST SAINT JOSEPH, MO 64501 STATUS REVIEW HEARING DATE:11-27-18 @ 8:30AM, DIV 1
Nature of Suit: CC Specific Performance	

(Date File Stamp)

Summons for Personal Service Outside the State of Missouri (Except Attachment Action)

The State of Missouri to: **NEWMARKET PHARMACEUTICALS, LLC**
Alias:

4 PITCAIRN AVENUE
SUITE 4
TRENTON, NJ 08628

COURT SEAL OF



BUCHANAN COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the plaintiff/petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

Wednesday, August 29, 2018

Date

/s/K. DOBOSZ, Deputy Clerk

Clerk

Further Information:

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - ☐ delivering a copy of the summons and a copy of the petition to the defendant/respondent.
 - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
 - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - ☐ other: _____

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and sworn to before me this _____ (day) _____ (month) _____ (year).

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each defendant/respondent. If any defendant/respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the defendant's/respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age who permanently resides with the defendant/respondent, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the defendant/respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must be made less than 10 days nor more than 30 days from the date the defendant/respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri court within 30 days after service.

JURISDICTION & VENUE

3. This Court has personal jurisdiction over NewMarket pursuant to RSMo. §506.500(1) and (2), in that, among other things, pursuant to Paragraph 14(b) of the Exclusive Distribution and License Agreement which is the subject of this action, the parties consented to jurisdiction within the Western District of Missouri where a party reasonably determined that injunctive relief was necessary; such agreement was negotiated and entered into in the State of Missouri; said agreement contemplated performance by both VetBridge and NewMarket within the State of Missouri, including, but not limited to, NewMarket sending multiple invoices to VetBridge in Missouri for payment of VetBridge's investment from Missouri, and VetBridge's development and/or performance of its marketing, sales forecasting and distribution under the agreement within and from the State of Missouri; NewMarket, through representatives and its agents, attended several meetings in the State of Missouri, placed and participated in numerous phone calls to and with VetBridge and its representatives and agents in the State of Missouri; sent numerous emails and other documents and reports to VetBridge within the State of Missouri; and otherwise transacted business within the State of Missouri. Further, VetBridge's causes of action herein arose out of the Exclusive Distribution and License Agreement and NewMarket's transaction of business within the State of Missouri, and NewMarket had sufficient minimum contacts with the State of Missouri such that the exercise of personal jurisdiction over NewMarket in this action comports with due process.

4. Venue in this Court is proper pursuant to RSMo. §508.010(4), in that NewMarket is a non-resident.

Count I (Breach of Contract)

5. NewMarket is engaged in developing drug delivery systems to enhance the quality of treatment for animals, by employing state of the art formulation technology to develop

and adapt new oral delivery technologies for established medicines that exist in outdated or inefficient delivery systems.

6. VetBridge and its members are companies engaged in the successful marketing, sale and distribution of animal healthcare products and veterinary supplies, including vaccines and pharmaceuticals, both nationally and internationally.

7. Effective, June 27, 2014 (“Effective Date”), for a term of thirty (30) years, NewMarket, as Manufacturer, and VetBridge, as Distributor, entered into an Exclusive Distribution and License Agreement (“Agreement”) with respect to the development, manufacture, supply, marketing and distribution of NewMarket products, consisting of rapidly dissolving formulations of omeprazole (used in the treatment and prevention of ulcers), including omeprazole direct system introduction (DSI) compositions for use in all non-human animals, especially equine animals (hereinafter, NewMarket’s “Omeprazole DSI Products”), as well as the licensing all of NewMarket’s intellectual property and patent rights relating thereto. A true and correct copy of the Agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

8. Pursuant to the Agreement, in exchange for VetBridge’s payment of the total sum of \$4,000,000, to be paid as provided for therein, NewMarket, among other things,

- (a) Appointed VetBridge as its “sole and exclusive authorized wholesale distributor and reseller to advertise, promote, market, distribute, supply and sell (“Distribute” or “Distribution”)” NewMarket’s Omeprazole DSI Products, including (i) rapidly dissolving formulations of omeprazole (for both the treatment and prevention of ulcers), including omeprazole direct system introduction (DSI) compositions for use in all non-human animals, especially equine animals; (ii) revisions, alterations or improvements to the

NewMarket's Omeprazole DSI Products; and (iii) new veterinary products developed by NewMarket in the contractually agreed upon Field, consisting of the "veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals," within the defined Territory, consisting of "the veterinary market in the United States of America including all of its states, districts, territories and possessions, including the District of Columbia"; and

- (b) Granted VetBridge, "in connection with the Distribution of the [Omeprazole DSI] Products in the Territory, an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license, among other things, [NewMarket's] IP associated with the [Omeprazole DSI] Products including but not limited to" NewMarket's Patent Rights, "including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing," "whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by [NewMarket] or an affiliate thereof, as of the Effective Date or during the term of this Agreement, which relate to [the Omeprazole DSI] Products, and their development, manufacture, or use in the Field and in the Territory," including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
1	US	61/437763	01/31/2011	
2	US	13/343,692; issued as 8,722,636	01/04/2012; issued 05/13/2014	Animal treatments
3	US	14/275,019; issued as 10,022,361	05/12/2014; issued 07/18/2018	Animal Treatments
4	US	14/275,031; issued as 9,402,835	05/12/2014; issued 08/02/2016	Animal Treatment
5	WO	PCT/US2012/020242	01/04/2012	Animal Treatment
6	US	61/674,435	07/23/2012	
7	US	61/678,355	01/08/2012	
8	US	61/641,509	02.05.2012	
9	WO	PCT/US2012/070031	12/17/2012	Pharmaceutical compositions for direct systemic introduction
10	US	14/398,085	10/30/2014	
11	US	16/014,290	06/21/2018	

(Hereinafter collectively referred to as NewMarket's "IP/Patent Rights").

9. Pursuant to the Agreement, VetBridge's \$4,000,000 was to be used "solely for direct expenses related to the development of the [Omeprazole DSI] Products," including, but not limited to, the direct expenses associated with preparing, prosecuting and obtaining approval of a New Animal Drug Application ("NADA") for such products, both for treatment and prevention, from the Federal Food and Drug Administration's ("FDA") Center for Veterinary Medicine ("CVM") and conducting necessary field clinical studies through a third party Contract Research Organization ("CRO"), VetPharm, Inc. ("VetPharm") in connection with the same.

10. Except for VetBridge's payment of \$4,000,000, NewMarket was responsible for performing and funding all other steps and tasks necessary to provide VetBridge with the Omeprazole DSI Products in a saleable form for distribution, including, but not limited to, obtaining the necessary approvals from the FDA's CVM and manufacturing and supplying VetBridge with the Omeprazole DSI Products in a saleable form for distribution.

11. VetBridge has fully performed its obligations under the Agreement and made timely payment of the amounts it was invoiced by NewMarket with respect to the \$4,000,000 it agreed to pay under the Agreement. In fact, by November 23, 2015, VetBridge had paid NewMarket the total sum of \$4,002,435.

12. Despite doing so, and notwithstanding VetBridge's numerous demands, NewMarket has failed and refused to perform and provide the funding required to perform the steps and tasks necessary to obtain FDA approval from the CVM and provide VetBridge with its Omeprazole DSI Products in a saleable form for distribution; all in material breach of its obligations under the Agreement.

13. As a direct and proximate result of NewMarket's breach of its obligations under the Agreement, VetBridge has sustained and continues to sustain substantial damages, including, but not limited to, the fees and expenses VetBridge incurred to design and obtain trademark registrations for the names and logos under which it intended to sell the Omeprazole DSI Products, and the net profits VetBridge would have earned from the sale and distribution of such Omeprazole DSI Products, in an amount to be determined at trial, but reasonably and conservatively estimated to be in amount in excess of \$81,000,000.

14. Further, pursuant to the Agreement, VetBridge is entitled to recover its reasonable attorneys' fees and expenses incurred in enforcing the Agreement.

15. All conditions precedent to maintaining this action have occurred or been waived.

WHEREFORE, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully prays that judgment be entered in its favor and against NewMarket Pharmaceuticals, LLC on Count I of its Petition for:

- (a) VetBridge's actual damages, including, but not limited to the fees and expenses VetBridge incurred to design and obtain trademark registrations for the names and

logos under which it intended to sell NewMarket's Omeprazole DSI Products, and the net profits VetBridge would have earned from the sale and distribution of such Omeprazole DSI Products; all in an amount to be determined at trial;

- (b) Prejudgment and post judgment interest at the highest rate allowable by law;
- (c) VetBridge's reasonable attorneys' fees and expenses;
- (d) The costs of this action; and
- (e) Such further and additional relief as the Court deems just and proper under the circumstances.

Count II (Breach of Contract)

16. In the alternative, for Count II of its Petition, VetBridge restates and adopts by reference the allegations set forth in ¶¶ 1 through 15, above, as though fully set forth herein.

17. Pursuant to the Agreement, VetBridge's \$4,000,000 was to be used "solely for direct expenses related to the development of the [Omeprazole DSI] Products," including, but not limited to, the direct expenses associated with preparing, prosecuting and obtaining approval of a NADA for such products, both for treatment and prevention, from the FDA's CVM and conducting necessary field clinical studies through VetPharm in connection with the same.

18. The Agreement provides that "any use of funds by [NewMarket] contrary to [the foregoing restriction] shall provide [VetBridge] with the right to immediate repayment from [NewMarket] of all monies paid to [NewMarket] by [VetBridge]."

19. By November 23, 2015, VetBridge had paid NewMarket the total sum of \$4,002,435. VetBridge's payments of the foregoing sum were made in response to invoices VetBridge received from NewMarket whereby NewMarket represented that the amounts invoiced were for the direct expenses NewMarket had paid to the specified vendors or third parties in connection with the development of its Omeprazole DSI Products.

20. The Agreement provides VetBridge with the right to audit NewMarket's records and information to, among other things, ensure that VetBridge's payments were being used solely in accordance with the express limitations and restrictions set forth in the Agreement.

21. On or about April 5, 2016, VetBridge requested that NewMarket provide it with a detailed, itemized reconciliation of how VetBridge's money was spent.

22. After reviewing the Excel spreadsheets NewMarket provided to VetBridge in response to that request, it was discovered that, contrary to the Agreement's restrictions and limitations on NewMarket's expenditure of the funds paid by VetBridge, as well as the representations made by NewMarket in its invoices to VetBridge, NewMarket, among other things, had used VetBridge's funds to pay for salaries, wages, payroll taxes and other administrative and overhead expenses in an amount in excess of \$1,000,000, and that NewMarket, pursuant to the invoices it submitted to VetBridge, had overcharged VetBridge by approximately \$1,612,070.15 from what it actually paid the vendors and other third parties, as reflected on such invoices.

23. As a result of the foregoing, on or about May 17, 2016, VetBridge notified NewMarket of its findings and advised that it was necessary for VetBridge to conduct a detailed audit of the NewMarket's invoices to VetBridge, as well as the underlying expenses and the invoices reflected thereon, so that it could ensure that the amounts NewMarket charged to VetBridge were proper.

24. NewMarket has failed and refused to permit VetBridge to conduct the requested audit, or to provide VetBridge with access to the information and records necessary to conduct the same.

25. Pursuant to the Agreement, and because NewMarket used the funds paid by VetBridge contrary to the limitations and restrictions in the Agreement, as an alternative to its

claim for breach of contract in Count I, above, VetBridge is entitled to repayment of the full \$4,002,435 it paid to NewMarket, together with prejudgment interest at the highest rate allowable by law from the date(s) VetBridge paid such sums to NewMarket.

26. Further, pursuant to the Agreement, VetBridge is entitled to recover its reasonable attorneys' fees and expenses incurred in enforcing the Agreement.

27. All conditions precedent to the maintenance of this action have occurred or been waived.

WHEREFORE, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully prays that judgment be entered in its favor and against NewMarket Pharmaceuticals, LLC on Count II of its Petition for:

- (a) The principal sum of \$4,002,435;
- (b) prejudgment and post-judgment interest at the highest rate allowable by law;
- (c) VetBridge's reasonable attorneys' fees and expenses;
- (d) The costs of this action; and
- (e) Such further and additional relief as the Court deems just and proper under the circumstances.

Count III (Specific Performance)

28. For Count III of its Petition, VetBridge restates and adopts by reference the allegations set forth in ¶¶ 1 through 27, above, as though fully set forth herein.

29. The Agreement expressly prohibited NewMarket from assigning, subcontracting, delegating or otherwise transferring any of its rights or obligations under the Agreement, or from contracting with any third parties to perform any of its obligations under the Agreement, without VetBridge's prior written consent, which consent has never been given.

30. Further, given NewMarket's grant to VetBridge of "an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license" NewMarket's IP/Patent Rights within the agreed upon Field and Territory, NewMarket was prohibited from assigning or granting to any other person or entity a license for its IP/Patent Rights in the contractually agreed upon Field (i.e., the "veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals") and Territory (i.e., "the veterinary market in the United States of America including all of its states, districts, territories and possessions, including the District of Columbia"). Additionally, the Agreement, at Paragraph 12(f), expressly prohibits NewMarket from granting any security interests or permitting any liens against its IP/Patent Rights, without VetBridge's prior consent, which consent has never been given.

31. Further, pursuant to the Agreement, VetBridge and NewMarket agreed that the parties intended that NewMarket would retain control of the manufacturing and supply of the Omeprazole DSI Products to VetBridge, and agreed, in the event of a "change of control" of NewMarket, that

[VetBridge] shall have the exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket's] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srini Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI] Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor. At its sole discretion,

in the event of a change of control of [NewMarket], [VetBridge] will have the right to...obtain a license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained....

(Agreement at ¶13(d)(ii)).

32. For purposes of the foregoing provision, NewMarket and VetBridge agreed that a "change of control," included the following events, among others:

(i) any Person is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as amended, except that a person shall be deemed to have "beneficial ownership" of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of over 50% of the total voting power of all classes of capital stock then outstanding of

[NewMarket] normally entitled to vote in elections of directors;
 or (iii) a party conveys, transfers or leases all or substantially all of
 its assets relating to this agreement to any person....”

33. On October 10, 2014, the parties’ filed a “NOTICE OF LICENSE RIGHTS IN A US PATENT APPLICATION OR US PATENT” with the U.S. Patent and Trademark Office (“USPTO”), as Document No. 503014511, EPAS ID: PAT3061111, at Patent Reel 033930, Frame 0226-0228, giving notice to the world of VetBridge’s rights in the IP/Patent Rights.

34. On or about May 6, 2016, NewMarket informed VetBridge for the first time, that it had purportedly transferred an 80% ownership interest in NewMarket to Aboris Animal Health, LLC (“Aboris”), a Delaware limited liability company; that it had purportedly assigned its right to manufacture its Omeprazole DSI Products to Aboris; and that it had purportedly transferred its IP/Patent Rights related to the Omeprazole DSI Products to an unnamed, overseas company for “tax purposes.”

35. Thereafter, on or about March 29, 2017, NewMarket advised VetBridge that it had completed its engagement of AgriCapital, as a broker, for the purported sale of the distribution rights to NewMarket’s Omeprazole DSI Products on a global basis, including within the United States, in direct violation of VetBridge’s exclusive rights under the Agreement.

36. Upon information and belief, NewMarket’s IP/Patent Rights with respect to its Omeprazole DSI Products and its relationship with any Collaborators, including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srini Pharmaceuticals of India, to make and commercialize its Omeprazole DSI Products, constitute all or substantially all of NewMarket’s assets relating to the Agreement.

37. NewMarket’s purported assignment of its right to manufacture its Omeprazole DSI Products to Aboris, as well as the purported transfer of its IP/Patent Rights related to the

Omeprazole DSI Products to an unnamed, overseas company for “tax purposes,” constitute a change of control under the Agreement, as did the purported transfer of an 80% ownership interest in NewMarket to Aboris.

38. Further, NewMarket’s purported assignment of its right to manufacture its Omeprazole DSI Products to Aboris and the purported transfer of its IP/Patent Rights related to the Omeprazole DSI Products to an unnamed, overseas company for “tax purposes,” if actually done, though no assignments of such rights have been filed with the USPTO, as well as its engagement of AgriCapital, as a broker, for the purported sale of the distribution rights to NewMarket’s Omeprazole DSI Products on a global basis, including within the United States, were done without VetBridge’s consent, written or otherwise, constitute material breaches of NewMarket’s obligations under the Agreement, and are void.

39. VetBridge’s rights under the Agreement and in NewMarket’s Omeprazole DSI Products and the IP/Patent Rights relating thereto are unique, and VetBridge is without an adequate remedy at law.

40. As a direct and proximate result of the change of control with respect to NewMarket, and its material breaches of the Agreement, VetBridge is entitled to a judgment of specific performance, granting VetBridge

- (a) The exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket’s] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srimi Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI]

Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor; and

- (b) A license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained.

41. Further, pursuant to the Agreement, VetBridge is entitled to recover its reasonable attorneys' fees and expenses incurred in enforcing the Agreement.

42. All conditions precedent to maintaining this action have occurred or been waived.

WHEREFORE, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully prays that judgment be entered in its favor and against NewMarket Pharmaceuticals, LLC on Count III of its Petition for specific performance under the Agreement, granting VetBridge:

- (a) The exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket's] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srini Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI] Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor; and
- (b) A license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained;

Together with:

- (c) An award of VetBridge's reasonable attorneys' fees and expenses;
- (d) The costs of this action; and
- (e) Such further and additional relief as the Court deems just and equitable under the circumstances.

COUNT IV
(Temporary, Preliminary & Permanent Injunctive Relief)

43. For Count IV of its Petition, VetBridge restates and adopts by reference the allegations set forth in ¶¶ 1 through 42, above, as though fully set forth herein.

44. As set forth in Count III, above, based upon NewMarket's "change of control," VetBridge has a probability of success on the merits, pursuant to Paragraph 13(d)(ii) of the Agreement, that it has the right to a judgment of specific performance granting VetBridge, among other things:

- (a) The exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket's] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srinu Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI] Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor; and
- (b) A license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including

manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained.

45. Given NewMarket's prior assertions to VetBridge, among other things, (a) that it purportedly assigned its right to manufacture its Omeprazole DSI Products to Aboris; and (b) that it purportedly transferred its IP/Patent Rights related to the Omeprazole DSI Products to an unnamed, overseas company for "tax purposes"; which, if done, were in material breach of the Agreement and in direct violation of VetBridge's exclusive distribution rights and license in and to NewMarket's Omeprazole DSI Products and IP/Patent Rights thereunder; as well as (c) that it has purportedly retained a broker to sell the distribution rights to NewMarket's Omeprazole DSI Products on a global basis, including within the Field and Territory exclusively granted to VetBridge under the Agreement, VetBridge has a reasonable apprehension that, if not temporarily, preliminarily and permanently enjoined from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to NewMarket's Omeprazole DSI Products and/or its IP/Patent Rights relating thereto in the contractually agreed upon Field and Territory, NewMarket will take some action

relating thereto which would render a judgment of specific performance in VetBridge's favor, as requested in Count III, ineffectual.

46. VetBridge's apprehension in this regard is heightened by the fact that NewMarket is currently involved in litigation with VetPharm, the CRO that performed all of the field clinical studies and has possession of all of the data and results of those field clinical studies necessary for NewMarket to pursue and obtain approval of its Omeprazole DSI Products for sale and distribution from the FDA's CVM, in the case styled *NewMarket Pharmaceuticals, LLC v. VetPharm, Inc.*, No. 3:17-CV-01852-MAS-TJB (the "VetPharm Litigation"), currently pending in the U.S. District Court for the District of New Jersey. In the VetPharm Litigation, VetPharm, among other things, claims it is owed more than \$900,000 from NewMarket for the work it performed with respect to such field clinical studies and has refused to release any of the data and results relating thereto, without first receiving payment of the amounts its claims are due and owing; and NewMarket has repeatedly stated its clear intention to enter into certain unspecified "business arrangements" with third parties to obtain necessary funding to pursue its NADA before the FDA's CVM, and to thereafter pursue the manufacture and distribution of its Omeprazole DSI Products once approval from the FDA's CVM is obtained.

47. Since NewMarket has represented that it is a single drug, drug company, and has no products other than its Omeprazole DSI Products and its IP/Patent Rights relating thereto, VetBridge has a reasonable apprehension that such unspecified "business arrangements" would necessarily include and directly or indirectly interfere with VetBridge's exclusive distribution rights and license in and to NewMarket's Omeprazole DSI Products and IP/Patent Rights thereunder.

48. Moreover, VetBridge recently learned that NewMarket has discontinued its payroll, and that the person principally involved in handling the pursuit of NewMarket's NADA

with the FDA's CVM, Dr. Dave Rock, its Vice-President of Research and Development, is no longer employed by NewMarket; causing even greater concern that NewMarket does not have the financial resources to remain in business, let alone pursue the required FDA approval that is necessary for the manufacture and sale of the Omeprazole DSI Products, creating a substantial risk that NewMarket will grant unknown third persons or entities rights that will interfere with VetBridge's exclusive distribution rights and license in and to NewMarket's Omeprazole DSI Products and IP/Patent Rights thereunder.

49. In the absence of a temporary, preliminary and permanent injunction as requested herein, VetBridge will suffer immediate and irreparable harm in that, among other things,

- (a) VetBridge's rights under the Agreement and in NewMarket's Omeprazole DSI Products and the IP/Patent Rights relating thereto are unique, such that VetBridge does not have an adequate remedy at law, and
- (b) Any judgment of specific performance, as requested in Count III, above, would be rendered ineffectual if NewMarket, while this action is pending, was to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant any rights or interest in or to its Omeprazole DSI Products and/or its IP/Patent Rights relating thereto to any person or entity in direct violation of VetBridge's exclusive rights and license in and to the same.

50. The harm VetBridge will suffer if NewMarket is not temporarily, preliminarily and permanently enjoined and restrained from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to NewMarket's Omeprazole DSI Products and/or its IP/Patent Rights relating thereto in the Field and Territory, outweighs any potential harm to NewMarket in being required to comply with the Agreement, which it knowingly and voluntarily entered into and for which it received

\$4,002,435 from VetBridge, in that VetBridge will lose not only the benefit of its bargain, but the exclusive right to make and commercialize the Omeprazole DSI Products in Field and Territory, as granted under the Agreement, as well as the right to assume the beneficial position of [NewMarket's] relationships with any Collaborators, including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srini Pharmaceuticals of India, to make and commercialize the [Omeprazole DSI] Product in the Field and Territory.

51. The public interest will be advanced requiring NewMarket to comply with the terms of the Agreement.

52. Pursuant to Mo. R. Civ. P. 92.02(b), VetBridge states that its request for a temporary restraining order should be heard ex parte because prior notice would defeat the purpose of the requested temporary restraining order in that it would provide NewMarket with an opportunity, prior to the issuance of a temporary restraining order, to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant any rights or interest in or to its Omeprazole DSI Products and/or its IP/Patent Rights relating thereto, thereby defeating the very purpose of the requested relief.

53. Pursuant to the Agreement, VetBridge is entitled to recover its reasonable attorneys' fees and expenses incurred in enforcing the Agreement.

54. All conditions precedent to maintaining this action have occurred or been waived.

WHEREFORE, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully prays, in accordance with Mo. R. Civ. P. 92.02 and RSMo. §526.050, that judgment be entered in its favor and against NewMarket Pharmaceuticals, LLC on Count IV of its Petition,

- (a) Temporarily, preliminarily, and permanently enjoining and restraining NewMarket Pharmaceutical, LLC, together with its officers, managers, members, agents, affiliates, attorneys, and employees, and all other persons in

active concert or participation with them, from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to NewMarket's Omeprazole DSI Products and/or its IP/Patent Rights relating thereto in the Field and Territory,

Together with:

- (b) An award of VetBridge's reasonable attorneys' fees and expenses;
- (c) The costs of this action; and
- (d) Such further and additional relief as the Court deems just and equitable under the circumstances.

JURY DEMAND

COME NOW Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC, by and through counsel, and respectfully demands a jury trial on every issue so triable.

Dated: August 28, 2018.

Respectfully submitted by,

LATHROP & GAGE LLP

BY: Greer S. Lang

Greer S. Lang MO #40107

Brian W. Fields MO #45704

2345 Grand Boulevard, Suite 2200

Kansas City, Missouri 64108-2618

Phone: 816.292.2000

Fax: 816.292.2001

glang@lathropgage.com

bfields@lathropgage.com

Attorneys for Plaintiff

VERIFICATION

State of Missouri)
)
 County of Jackson) ss

I, Kevin Speltz, having first been duly sworn on my oath, depose and state that I am the Manager of VetBridge Product Development Subsidiary I (NM-OMP), LLC ("VetBridge"); that I am the duly authorized representative of VetBridge to verify the above Verified Petition for Damages, Specific Performance and Injunctive Relief; that I have personal knowledge of the factual matters alleged herein; and that the same are true and correct to the best of my information, knowledge and belief.

Dated: August 20, 2018

VetBridge Product Development Subsidiary
 I (NM-OMP), LLC

By:

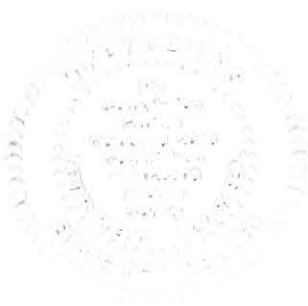
Kevin Speltz, Manager

Subscribed and sworn to before me, a notary public, on August 20, 20168

Mindy Deming
 Notary Public

My Commission Expires On:

MINDY D. DEMING, NOTARY PUBLIC, NOTARY SEAL
 ANDREW COUNTY, STATE OF MISSOURI
 MY COMMISSION# 14025608 EXPIRES 10/8/2018



EXCLUSIVE DISTRIBUTION AND LICENSE AGREEMENT

Effective June 27th 2014, 2014 ("Effective Date"),
VetBridge Product Development Subsidiary I (NM-OMP), LLC, a to-be-formed limited liability
company of the state of Missouri ("VB-NM-OMP" or "Distributor") and NewMarket
Pharmaceuticals LLC, a limited liability company of the state of Delaware ("Manufacturer")
agree ("Agreement") as follows:

REDACTED

(j) **Entire Agreement.** This Agreement and its Exhibits constitute the entire agreement between the parties, and supersede all prior oral and written agreements and understandings between the parties. This Agreement cannot be modified or amended, except in writing signed by all parties. In the event of any inconsistency between this Agreement and its Exhibits, this Agreement shall control. For avoidance of doubt, this Agreement supersedes the Letter of Intent of May 14, 2014.

(k) **Governing Law and Jurisdiction.** This Agreement shall be governed by Missouri law without consideration of conflict of laws principles.

(l) **Counterparts and Facsimile.** This may be signed in counterpart and facsimile.

16. SIGNATURES.

Accepted and agreed:

NEWMARKET PHARMACEUTICALS LLC

Date: _____, 20__

By: _____

Print Name: _____

Title: _____

VETBRIDGE PRODUCT DEVELOPMENT SUBSIDIARY I (NM-OMP), LLC

Date: June 27th, 20__

By: [Signature]

Print Name: Kevin Speltz

Title: President

(j) **Entire Agreement.** This Agreement and its Exhibits constitute the entire agreement between the parties, and supersede all prior oral and written agreements and understandings between the parties. This Agreement cannot be modified or amended, except in writing signed by all parties. In the event of any inconsistency between this Agreement and its Exhibits, this Agreement shall control. For avoidance of doubt, this Agreement supersedes the Letter of Intent of May 14, 2014.

(k) **Governing Law and Jurisdiction.** This Agreement shall be governed by Missouri law without consideration of conflict of laws principles.

(l) **Counterparts and Facsimile.** This may be signed in counterpart and facsimile.

16. SIGNATURES.

Accepted and agreed:

Date: June 27th, 2014

By: [Signature]

Print Name: Mark Riddell

Title: President

NEWMARKET PHARMACEUTICALS LLC

Date: June 27th, 2014

VETBRIDGE PRODUCT DEVELOPMENT
SUBSIDIARY I (NM-OMP), LLC

By: [Signature]

Print Name: Kevin Ebel

Title: President

VetBridge Product Development Subsidiary I)
(NM-OMP), LLC,)
)
Plaintiff,) Case No. _____
)
vs.)
)
NewMarket Pharmaceuticals, LLC,)
)
Defendant.)
)

Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC (“VetBridge”), by and through counsel, and pursuant to Missouri Rule of Civil Procedure 92.02(b), moves the Court for a temporary restraining order, without notice, to enjoin and restrain Defendant NewMarket Pharmaceuticals, LLC (“Defendant” or NewMarket”), in breach of VetBridge’s exclusive distribution rights and license granted under the the parties’ June 27, 2014 Exclusive Distribution and License Agreement (“Agreement”), attached as **Exhibit A** to VetBridge’s Verified Petition for Damages, Specific Performance & Injunctive Relief (“Verified Petition”), from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to:

- Case 5:18-cv-06147-BCW Document 30-2 Filed 11/15/18 Page 45 of 104 043

2. NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date of the Agreement (June 27, 2014) or during the term of said Agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use, including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
1	US	61/437763	01/31/2011	
2	US	13/343,692; issued as 8,722,636	01/04/2012; issued 05/13/2014	Animal treatments
3	US	14/275,019; issued as 10,022,361	05/12/2014; issued 07/18/2018	Animal Treatments
4	US	14/275,031; issued as 9,402,835	05/12/2014; issued 08/02/2016	Animal Treatment
5	WO	PCT/US2012/020242	01/04/2012	Animal Treatment
6	US	61/674,435	07/23/2012	
7	US	61/678,355	01/08/2012	
8	US	61/641,509	02.05.2012	
9	WO	PCT/US2012/070031	12/17/2012	Pharmaceutical compositions for direct systemic introduction
10	US	14/398,085	10/30/2014	
11	US	16/014,290	06/21/2018	

(collectively, the "IP/Patent Rights"),

in the Field (consisting of the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals) and Territory (consisting of the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia).

In support of this Motion, VetBridge incorporates by reference its Verified Petition, which is being filed concurrently herewith, as though fully set forth herein.

WHEREFORE, for the reasons set forth in its Verified Petition, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully requests that the Court grant this Motion and enter a Temporary Restraining Order, temporarily enjoining and restraining Defendant VetBridge Pharmaceuticals, LLC, as set forth in the proposed Temporary Restraining Order being submitted herewith.

Dated: August 28, 2018.

Respectfully submitted by,

LATHROP & GAGE LLP

BY: Greer S. Lang

Greer S. Lang MO #40107

Brian W. Fields MO #45704

2345 Grand Boulevard, Suite 2200

Kansas City, Missouri 64108-2618

Phone: 816.292.2000

Fax: 816.292.2001

glang@lathropgage.com

bfields@lathropgage.com

Attorneys for Plaintiff

State of Missouri)
) ss.
County of Buchanan)

CERTIFICATE OF TRUE COPY

I, Mary E. Beattie, Clerk of the Circuit Court of Buchanan County, Missouri, do hereby certify that the attached is a true copy of the TEMPORARY RESTRAINING ORDER in Case No.18BU-CV03640, as same appears of record and on file in my office.

WITNESS my hand and seal of the Court this 5TH day of September, 2018.

MARY E. BEATTIE, CIRCUIT CLERK
BUCHANAN COUNTY, MISSOURI

By: _____

Halee Hocklin
Deputy Clerk

**IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
(DIVISION NO. 1)**

VetBridge Product Development Subsidiary I)	
(NM-OMP), LLC,)	
)	
Plaintiff,)	Case No. 18BU-CV03640
)	
vs.)	
)	
NewMarket Pharmaceuticals, LLC,)	
)	
Defendant.)	
<hr/>		

TEMPORARY RESTRAINING ORDER

Before the Court is Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC's ("VetBridge"), Ex Parte Motion for a Temporary Restraining Order, which seeks a temporary restraining order against Defendant NewMarket Pharmaceuticals, LLC ("Defendant" or "NewMarket"). VetBridge has filed a Verified Petition for Damages, Specific Performance & Injunctive Relief and Exhibit A thereto (the "Verified Petition").

Having now considered the information, pleadings and evidence before it, and being fully advised in the premises, the Court finds as follows:

1. Based upon the statements of counsel and the sworn statement of Kevin Speltz, VetBridge's managing member, in the Verified Petition, pursuant to Mo. R. Civ. P. 92.02(b)(2), the Court finds that a temporary restraining order may properly be issued without notice to NewMarket. Specifically, the Court finds that there is a significant risk that providing notice of this proceeding under Mo. R. Civ. P. 92.02(a)(3) would provide NewMarket with an opportunity, prior to the issuance of a temporary restraining order, to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant rights or interests in or to its

Omeprazole DSI Products and/or the IP/Patent Rights relating thereto, as defined below, thereby defeating the very purpose of the requested relief.

2. VetBridge has petitioned this Court for a temporary restraining order to enjoin and restrain Defendant NewMarket from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to:

- (a) NewMarket's Omeprazole DSI Products, consisting of (a) rapidly dissolving formulations of omeprazole (used for both the treatment and prevention of ulcers), including omeprazole direct systemic introduction (DSI) compositions for use in all non-human animals including especially equine animals, and (b) any revisions, alterations, or improvements to such products (collectively, the "Omeprazole DSI Products), and/or
- (b) NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date (June 27, 2014) of the Exclusive Distribution and License Agreement or during the term of said agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use in the Field and in the Territory, as defined below, including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
1	US	61/437763	01/31/2011	
2	US	13/343,692; issued as 8,722,636	01/04/2012; issued 05/13/2014	Animal treatments
3	US	14/275,019; issued as 10,022,361	05/12/2014; issued 07/18/2018	Animal Treatments
4	US	14/275,031; issued as 9,402,835	05/12/2014; issued 08/02/2016	Animal Treatment
5	WO	PCT/US2012/020242	01/04/2012	Animal Treatment
6	US	61/674,435	07/23/2012	
7	US	61/678,355	01/08/2012	
8	US	61/641,509	02.05.2012	

Item	Country	Patent Application or Patent No.	Filing Date	Title
9	WO	PCT/US2012/070031	12/17/2012	Pharmaceutical compositions for direct systemic introduction
10	US	14/398,085	10/30/2014	
11	US	16/014,290	06/21/2018	

(collectively, the “IP/Patent Rights”),

in the Field (defined as “the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals”) and Territory (defined as “the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia”).

3. VetBridge has submitted persuasive evidence, through its Verified Petition and Ex Parte Motion for a Temporary Restraining Order, and the Court finds, that:

- (a) The June 27, 2014 Exclusive Distribution and License Agreement (the “Agreement,” **Exhibit A** to the Verified Petition) is a valid and enforceable agreement.
- (b) Pursuant to the Agreement, for and in consideration of VetBridge’s payment of \$4,000,000 to NewMarket, which sums were to be used “solely for direct expenses related to the development of the [Omeprazole DSI] Products,” NewMarket:
 - (1) Appointed VetBridge as its “sole and exclusive authorized wholesale distributor and reseller to advertise, promote, market, distribute, supply and sell (“Distribute” or “Distribution”)” NewMarket’s Omeprazole DSI Products in the Field and Territory; and
 - (2) Granted VetBridge, “in connection with the Distribution of the [Omeprazole DSI] Products in the Territory, an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license, the IP/Patent Rights in the Field and Territory.
- (c) VetBridge made timely payment to NewMarket of the \$4,000,000 due under the Agreement.

- (d) The Agreement expressly prohibits NewMarket from assigning, subcontracting, delegating or otherwise transferring any of its rights or obligations under the Agreement, or from contracting with any third parties to perform any of its obligations under the Agreement, without VetBridge's prior written consent.
- (e) Further, given NewMarket's grant to VetBridge of "an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license" NewMarket's IP/Patent Rights within the agreed upon Field and Territory, NewMarket is prohibited from assigning or granting to any other person or entity a license for its IP/Patent Rights in the Field and Territory.
- (f) Additionally, the Agreement, at Paragraph 12(f), expressly prohibits NewMarket from granting any security interests or permitting any liens against its IP/Patent Rights, without VetBridge's prior consent.
- (g) A "change of control," as defined in Paragraph 13(d)(v) of the Agreement, has occurred.
- (h) In the event of a "change of control," pursuant to Paragraph 13(d)(ii) of the Agreement, VetBridge is entitled to:
 - (1) The exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket's] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srinu Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI] Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor; and
 - (2) A license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained.
- (i) VetBridge has requested specific performance of the Agreement, and specifically, enforcement of its rights under Paragraph 13(d)(ii), in Count III of its Verified Petition.

- (j) In the absence of the requested temporary restraining order, VetBridge will suffer immediate and irreparable harm, in that, among other things:
- (1) VetBridge's rights under the Agreement and in NewMarket's Omeprazole DSI Products and the IP/Patent Rights relating thereto are unique, and VetBridge is without an adequate remedy at law; and
 - (2) Any judgment of specific performance, as requested in Count III of the Verified Petition, would be rendered ineffectual, if NewMarket were to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant any rights or interest in or to its Omeprazole DSI Products and/or its IP/Patent Rights relating thereto to any person or entity, in direct violation of VetBridge's exclusive rights and license in and to the same.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant NewMarket Pharmaceuticals, LLC, together with its officers, managers, members, agents, affiliates, attorneys, and employees, and all other persons in active concert or participation with them, are hereby enjoined and restrained from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to:

1. NewMarket's Omeprazole DSI Products, consisting of (a) rapidly dissolving formulations of omeprazole (used for both the treatment and prevention of ulcers), including omeprazole direct systemic introduction (DSI) compositions for use in all non-human animals including especially equine animals, and (b) any revisions, alterations, or improvements to such products (collectively, the "Omeprazole DSI Products), and/or
2. NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date (June 27, 2014) of the Exclusive Distribution and License Agreement or during the term of said agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use in the Field and in the Territory, as defined below, including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
1	US	61/437763	01/31/2011	
2	US	13/343,692; issued as 8,722,636	01/04/2012; issued 05/13/2014	Animal treatments
3	US	14/275,019; issued as 10,022,361	05/12/2014; issued 07/18/2018	Animal Treatments
4	US	14/275,031; issued as 9,402,835	05/12/2014; issued 08/02/2016	Animal Treatment
5	WO	PCT/US2012/020242	01/04/2012	Animal Treatment
6	US	61/674,435	07/23/2012	
7	US	61/678,355	01/08/2012	
8	US	61/641,509	02.05.2012	
9	WO	PCT/US2012/070031	12/17/2012	Pharmaceutical compositions for direct systemic introduction
10	US	14/398,085	10/30/2014	
11	US	16/014,290	06/21/2018	

(collectively, the “IP/Patent Rights”),

in the Field (defined as “the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals”) and Territory (defined as “the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia”).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

VetBridge shall post a cash or surety bond with the Clerk of the Circuit Court of Buchanan County, Missouri, in the sum of \$ 1000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

A hearing is set on Plaintiff's motion for a preliminary injunction made in its Verified Petition for September 14, 2018 at 9:30 o'clock a.m. p.m. in Division 1 of the Circuit Court for Buchanan County, Missouri.

This Temporary Restraining Order is entered at 9:19 a.m. p.m. and will remain in effect for ten (10) days, as the Court fixes or until further Order of this Court.

At the preliminary injunction hearing the Court will consider whether to award VetBridge its attorney's fees, court costs, and other costs incurred in this proceeding, pursuant to Missouri law and in accordance with the Agreement.

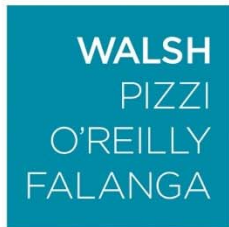
IT IS SO ORDERED.

8/05/2018

Date

Melissa Clawyer

Circuit Court Judge



One Riverfront Plaza

1037 Raymond Blvd, Suite 600
Newark, NJ 07102

T: 973.757.1100
F: 973.757.1090

WALSH.LAW

Joel A. Pisano
Direct Dial: (973) 757-1035
jpisano@walsh.law

September 7, 2018

VIA ECF

Honorable Michael A. Shipp, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Federal Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

**Re: *NewMarket Pharmaceuticals, LLC v. VetPharm, Inc. et al.*
Civil Action No. 3:17-cv-01852-MAS-TJB**

Dear Judge Shipp:

This firm, together with Cadwalader, Wickersham & Taft LLP, represents Plaintiff NewMarket Pharmaceuticals, LLC ("Plaintiff" or "NewMarket") in the above-referenced matter. We write to advise this Court of a recently-filed lawsuit against NewMarket by a company called VetBridge Product Development Subsidiary ("VetBridge"). (Exhibit 1).¹ VetBridge would be a partial distributor of NewMarket's drug if its drug is ever approved by the FDA.

In *VetBridge v. NewMarket*, the Circuit Court of Buchanan County, Missouri (18BU-CV03640) issued an Ex Parte Temporary Restraining Order against NewMarket from "directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to [NewMarket's Intellectual Property]". (Exhibit 2). NewMarket has attached the filings from the Missouri State Court for the convenience of this Court. (See Exhibits 1-3). NewMarket respectfully notes the following facts to the extent the facts are relevant to any decision forthcoming from this Court:

- VetBridge claims that "NewMarket has failed to and refused to perform and provide the funding required to perform the steps and tasks necessary to obtain FDA approval from the CVM and provide VetBridge with [the product]." (Exhibit 1, Complaint at ¶12).
- VetBridge argued that it was entitled to a TRO because "NewMarket does not have the financial resources to remain in business, let alone pursue the required FDA

¹ Exhibit A attached to the Missouri State Court Complaint is confidential. It appears as if Exhibit A was made publicly available by virtue of being electronically filed. As NewMarket endeavors to ascertain whether or not VetBridge has breached confidentiality requirements NewMarket respectfully requests that the Court and VetPharm keep Exhibit A under seal.

Honorable Michael A. Shipp, U.S.D.J.

September 7, 2018

Page 2

approval that is necessary for the manufacture and sale of [the product].” (*Id.* at ¶48).

- VetBridge claims that it is entitled to damages equal to the “net profits VetBridge would have earned from the sale and distribution ... in an amount to be determined at trial, but reasonably and conservatively estimated to be in the amount in excess of \$81,000,000. (*Id.* at ¶13).

NewMarket did not receive any notice of the Complaint or TRO until yesterday. To the extent the Missouri State Court case is not dismissed NewMarket will seek to consolidate that action with the present case in this Court.

We thank the Court for its continued attention to this matter, and are available should Your Honor or Your Honor’s staff require anything further or have any questions.

Respectfully submitted,

s/Joel A. Pisano

Joel A. Pisano

cc: All Counsel of Record (via E-mail)

EXHIBIT 2

**IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
(DIVISION NO. 1)**

VetBridge Product Development Subsidiary I)
(NM-OMP), LLC,)
)
Plaintiff,) Case No. 18BU-CV03640
)
vs.)
)
NewMarket Pharmaceuticals, LLC,)
)
Defendant.)
)

TEMPORARY RESTRAINING ORDER

Before the Court is Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC's ("VetBridge"), Ex Parte Motion for a Temporary Restraining Order, which seeks a temporary restraining order against Defendant NewMarket Pharmaceuticals, LLC ("Defendant" or "NewMarket"). VetBridge has filed a Verified Petition for Damages, Specific Performance & Injunctive Relief and Exhibit A thereto (the "Verified Petition").

Having now considered the information, pleadings and evidence before it, and being fully advised in the premises, the Court finds as follows:

1. Based upon the statements of counsel and the sworn statement of Kevin Speltz, VetBridge's managing member, in the Verified Petition, pursuant to Mo. R. Civ. P. 92.02(b)(2), the Court finds that a temporary restraining order may properly be issued without notice to NewMarket. Specifically, the Court finds that there is a significant risk that providing notice of this proceeding under Mo. R. Civ. P. 92.02(a)(3) would provide NewMarket with an opportunity, prior to the issuance of a temporary restraining order, to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant rights or interests in or to its

Omeprazole DSI Products and/or the IP/Patent Rights relating thereto, as defined below, thereby defeating the very purpose of the requested relief.

2. VetBridge has petitioned this Court for a temporary restraining order to enjoin and restrain Defendant NewMarket from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to:

- (a) NewMarket's Omeprazole DSI Products, consisting of (a) rapidly dissolving formulations of omeprazole (used for both the treatment and prevention of ulcers), including omeprazole direct systemic introduction (DSI) compositions for use in all non-human animals including especially equine animals, and (b) any revisions, alterations, or improvements to such products (collectively, the "Omeprazole DSI Products), and/or
- (b) NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date (June 27, 2014) of the Exclusive Distribution and License Agreement or during the term of said agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use in the Field and in the Territory, as defined below, including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
1	US	61/437763	01/31/2011	
2	US	13/343,692; issued as 8,722,636	01/04/2012; issued 05/13/2014	Animal treatments
3	US	14/275,019; issued as 10,022,361	05/12/2014; issued 07/18/2018	Animal Treatments
4	US	14/275,031; issued as 9,402,835	05/12/2014; issued 08/02/2016	Animal Treatment
5	WO	PCT/US2012/020242	01/04/2012	Animal Treatment
6	US	61/674,435	07/23/2012	
7	US	61/678,355	01/08/2012	
8	US	61/641,509	02.05.2012	

Item	Country	Patent Application or Patent No.	Filing Date	Title
9	WO	PCT/US2012/070031	12/17/2012	Pharmaceutical compositions for direct systemic introduction
10	US	14/398,085	10/30/2014	
11	US	16/014,290	06/21/2018	

(collectively, the “IP/Patent Rights”),

in the Field (defined as “the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals”) and Territory (defined as “the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia”).

3. VetBridge has submitted persuasive evidence, through its Verified Petition and Ex Parte Motion for a Temporary Restraining Order, and the Court finds, that:

- (a) The June 27, 2014 Exclusive Distribution and License Agreement (the “Agreement,” **Exhibit A** to the Verified Petition) is a valid and enforceable agreement.
- (b) Pursuant to the Agreement, for and in consideration of VetBridge’s payment of \$4,000,000 to NewMarket, which sums were to be used “solely for direct expenses related to the development of the [Omeprazole DSI] Products,” NewMarket:
 - (1) Appointed VetBridge as its “sole and exclusive authorized wholesale distributor and reseller to advertise, promote, market, distribute, supply and sell (“Distribute” or “Distribution”)” NewMarket’s Omeprazole DSI Products in the Field and Territory; and
 - (2) Granted VetBridge, “in connection with the Distribution of the [Omeprazole DSI] Products in the Territory, an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license, the IP/Patent Rights in the Field and Territory.
- (c) VetBridge made timely payment to NewMarket of the \$4,000,000 due under the Agreement.

- (d) The Agreement expressly prohibits NewMarket from assigning, subcontracting, delegating or otherwise transferring any of its rights or obligations under the Agreement, or from contracting with any third parties to perform any of its obligations under the Agreement, without VetBridge's prior written consent.
- (e) Further, given NewMarket's grant to VetBridge of "an exclusive, transferable, perpetual and royalty-free right and license to use, sell, offer for sale, import, and Distribute, with the right to sub-license" NewMarket's IP/Patent Rights within the agreed upon Field and Territory, NewMarket is prohibited from assigning or granting to any other person or entity a license for its IP/Patent Rights in the Field and Territory.
- (f) Additionally, the Agreement, at Paragraph 12(f), expressly prohibits NewMarket from granting any security interests or permitting any liens against its IP/Patent Rights, without VetBridge's prior consent.
- (g) A "change of control," as defined in Paragraph 13(d)(v) of the Agreement, has occurred.
- (h) In the event of a "change of control," pursuant to Paragraph 13(d)(ii) of the Agreement, VetBridge is entitled to:
 - (1) The exclusive right to make and commercialize [the Omeprazole DSI] Products in the Field and in the Territory as granted under the Agreement as well as the right to assume the beneficial position of [NewMarket's] relationship with any Collaborator [including, but not limited to, Collaborators Catalent Pharma Solutions, LLC and Srini Pharmaceuticals of India,] to make and commercialize the [Omeprazole DSI] Product in the Field and in the Territory without further consideration or compensation to [NewMarket's] successor; and
 - (2) A license from [NewMarket] (or its successor as applicable) for all rights to the [Omeprazole DSI] Products, including manufacturing, subject to no more than a maximum running royalty rate of 7.00% of Net Sales (whereby, unless mutually agreed otherwise, "Net Sales" shall correspond to gross revenues received from the sale of [the Omeprazole DSI] Products less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount), with such maximum royalty rate contingent upon [VetBridge] securing no less favorable terms with any [NewMarket] Collaborators as [NewMarket] had obtained.
- (i) VetBridge has requested specific performance of the Agreement, and specifically, enforcement of its rights under Paragraph 13(d)(ii), in Count III of its Verified Petition.

- (j) In the absence of the requested temporary restraining order, VetBridge will suffer immediate and irreparable harm, in that, among other things:
 - (1) VetBridge's rights under the Agreement and in NewMarket's Omeprazole DSI Products and the IP/Patent Rights relating thereto are unique, and VetBridge is without an adequate remedy at law; and
 - (2) Any judgment of specific performance, as requested in Count III of the Verified Petition, would be rendered ineffectual, if NewMarket were to directly or indirectly pledge, encumber, assign, transfer, dispose of or otherwise convey or grant any rights or interest in or to its Omeprazole DSI Products and/or its IP/Patent Rights relating thereto to any person or entity, in direct violation of VetBridge's exclusive rights and license in and to the same.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant NewMarket Pharmaceuticals, LLC, together with its officers, managers, members, agents, affiliates, attorneys, and employees, and all other persons in active concert or participation with them, are hereby enjoined and restrained from directly or indirectly pledging, encumbering, assigning, transferring, disposing of or otherwise conveying or granting any rights or interests in or to:

- 1. NewMarket's Omeprazole DSI Products, consisting of (a) rapidly dissolving formulations of omeprazole (used for both the treatment and prevention of ulcers), including omeprazole direct systemic introduction (DSI) compositions for use in all non-human animals including especially equine animals, and (b) any revisions, alterations, or improvements to such products (collectively, the "Omeprazole DSI Products), and/or
- 2. NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date (June 27, 2014) of the Exclusive Distribution and License Agreement or during the term of said agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use in the Field and in the Territory, as defined below, including, but not limited to, the following:

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(collectively, the “IP/Patent Rights”),

in the Field (defined as “the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals”) and Territory (defined as “the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia”).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

VetBridge shall post a cash or surety bond with the Clerk of the Circuit Court of Buchanan County, Missouri, in the sum of \$ 1000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

A hearing is set on Plaintiff's motion for a preliminary injunction made in its Verified Petition for September 14, 2018 at 9:30 o'clock a.m. p.m. in Division 1 of the Circuit Court for Buchanan County, Missouri.

This Temporary Restraining Order is entered at 9:19 a.m. p.m. and will remain in effect for ten (10) days, as the Court fixes or until further Order of this Court.

At the preliminary injunction hearing the Court will consider whether to award VetBridge its attorney's fees, court costs, and other costs incurred in this proceeding, pursuant to Missouri law and in accordance with the Agreement.

IT IS SO ORDERED.

9/05/2018

Date

Melissa Clawyer
Circuit Court Judge

EXHIBIT 3

2. NewMarket's IP/Patent Rights relating thereto, including all patents and patent applications, and all divisionals, continuations, continuations-in-part, counterparts, re-examinations, reissues, extensions, registrations, and supplementary or complementary certificates and the like, both domestic and foreign, and items which claim the benefit of priority to any of the foregoing, whether in whole or in part, directly or indirectly owned, licensed, and/or optioned (with the right to grant sub-licenses) by NewMarket or an affiliate thereof, as of the Effective Date of the Agreement (June 27, 2014) or during the term of said Agreement, which relate to the Omeprazole DSI Products, and their development, manufacture, or use, including, but not limited to, the following:

Item	Country	Patent Application or Patent No.	Filing Date	Title
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11	US	16/014,290	06/21/2018	

(collectively, the "IP/Patent Rights"),

in the Field (consisting of the veterinary use of rapidly dissolving formulations of omeprazole in all non-human animals including especially horses and other equine animals) and Territory (consisting of the veterinary market in the United States of America including all of its states, districts, territories, and possessions, including the District of Columbia).

In support of this Motion, VetBridge incorporates by reference its Verified Petition, which is being filed concurrently herewith, as though fully set forth herein.

WHEREFORE, for the reasons set forth in its Verified Petition, Plaintiff VetBridge Product Development Subsidiary I (NM-OMP), LLC respectfully requests that the Court grant this Motion and enter a Temporary Restraining Order, temporarily enjoining and restraining Defendant VetBridge Pharmaceuticals, LLC, as set forth in the proposed Temporary Restraining Order being submitted herewith.

Dated: August 28, 2018.

Respectfully submitted by,

LATHROP & GAGE LLP

BY: Greer S. Lang

Greer S. Lang MO #40107

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Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

NOTICE OF MOTION TO SEAL

Return Date: November 5, 2018

Filed Electronically

PLEASE TAKE NOTICE that on November 5, 2018, or as soon thereafter as counsel may be heard, the undersigned, attorneys for Plaintiff NewMarket Pharmaceuticals, LLC ("Plaintiff") shall move before the Honorable Tonianne J. Bongiovanni, U.S.M.J., at the Clarkson S. Fischer Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, for the entry of an Order pursuant to Local Civil Rule 5.3(c) to Seal the following filings or portions thereof:

1. The entirety of Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon.

Michael A. Shipp, U.S.D.J. (D.E. 88); and

2. VetPharm, Inc.'s September 11, 2018 Letter to the Hon. Michael A. Shipp,
U.S.D.J. (D.E. 90).

PLEASE TAKE FURTHER NOTICE THAT the Plaintiff shall rely upon the accompanying Proposed Findings of Fact and Conclusions of Law, Declaration of Joel A. Pisano with Exhibit 1 annexed thereto; and all papers submitted herewith.

PLEASE TAKE FURTHER NOTICE THAT that Defendants do not object to this motion.

PLEASE TAKE FURTHER NOTICE THAT a proposed form of Order is also submitted for the Court's consideration.

Respectfully submitted,

Dated: September 26, 2018

By: s/Joel A. Pisano
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Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

**DECLARATION OF
JOEL A. PISANO IN SUPPORT OF
MOTION TO SEAL**

Filed Electronically

I, Joel A. Pisano, do hereby declare as follows:

1. I am an attorney with Walsh Pizzi O'Reilly Falanga LLP. I am fully familiar with the facts set forth herein.

2. I submit this Declaration in support of Plaintiff's Motion to Seal the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.'s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90). Specifically, Plaintiff seeks to seal the select portions of the above documents identified in the Index attached hereto as

Exhibit 1. These select portions of the above documents are collectively referred to herein as the “Confidential Information.”

3. In particular, the Confidential Information discloses Plaintiff’s proprietary commercial and business interests, including information relevant to Plaintiff’s partial distribution and license agreement with a third party that the parties maintain in confidence in light of the highly competitive marketplace. Disclosure of this information would result in substantial harm to Plaintiff and/or third party’s ability to compete in the marketplace.

4. It is my understanding that the Confidential Information contain information regarding the partial distribution and license agreement and have been designated and/or otherwise treated as confidential by Plaintiff and/or third party.

5. There is a substantial public interest in ensuring that non-public information relating to Plaintiff and/or third party’s competitively sensitive and propriety business information remains confidential and will not become public at a later date.

6. The non-public and competitively sensitive and propriety business information of Plaintiff and/or third party, from which competitors could identify Plaintiff and/or third party’s commercial interests embodies content which, if disclosed, would likely harm Plaintiff and/or third party’s competitive standing in the marketplace.

7. Plaintiff and/or third party have a continuing interest to ensure that their confidential and proprietary non-public information remains undisclosed. If this information were to become available, Plaintiff and/or third party’s confidential business information will be publicized. Plaintiff and/or third party operate in a competitive marketplace, one in which competitors may exploit the information for their own benefit and to Plaintiff and/or third party's detriment. If other, more well established competitors were able to use the information contained in the Confidential Information, that would, at the very least, cause Plaintiff and/or

third party to suffer serious and irreparable financial injury.

8. There is no less restrictive alternative other than sealing portions of the above-listed documents. This is the least restrictive alternative available to protect the nonpublic highly confidential information contained in the documents.

I declare that the foregoing statements made by me are true and am aware that if any of the foregoing statements made by me are willingly false that I am subject to punishment.

Dated: September 26, 2018

s/Joel A. Pisano
Joel A. Pisano

EXHIBIT 1

INDEX IN SUPPORT OF JOINT MOTION TO SEAL

Material/Title of Document		Basis for Sealing (Legitimate Private or Public Interest Which Warrant the Relief Sought)	Clearly Defined and Serious Injury that Would Result if Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88);						
Exhibit 1	In its entirety.	<p>Plaintiff requests redaction of its commercially sensitive, proprietary business information relating Plaintiff's partial distribution and license agreement with a third party.</p> <p><i>See</i> Declaration of Joel A. Pisano ("Pisano Decl.")</p>	Plaintiff and/or third party have a continuing interest to ensure that their confidential and proprietary non-public information remains undisclosed. If this information were to become available, Plaintiff and/or third party's confidential business information will be publicized. Plaintiff and/or third party operate in a competitive marketplace, one in which competitors may exploit the information for their own benefit and to Plaintiff and/or third party's detriment. If other, more well established competitors were able to use the information contained in the Confidential Information,	<p>There is no less restrictive alternative other than sealing portions of the below-listed documents. This is the least restrictive alternative available to protect the nonpublic highly confidential information contained in the documents. See Pisano Decl.</p> <p>Additionally, redacted versions of the documents have been filed on the docket consistent with this Index.</p>	Sealing Orders D.E. 25, D.E. 82.	None

Material/Title of Document		Basis for Sealing (Legitimate Private or Public Interest Which Warrant the Relief Sought)	Clearly Defined and Serious Injury that Would Result if Relief is Not Granted	Why a Less Restrictive Alternative to the Relief Sought is Not Available	Any Prior Order Sealing the Same Materials in the Pending Action	Party in Opposition to Sealing, if any, and Basis
			that would, at the very least, cause Plaintiff and/or third party to suffer serious and irreparable financial injury. <i>See</i> Pisano Decl.			
VetPharm, Inc.’s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90)						
Page 2	First full paragraph, line 2, from “assertions” until the end of the paragraph. Second full paragraph, line 4, from “services” until “As VetBridge’s” on line 7. Footnote 2 in its entirety.	<i>See</i> Explanation Above	<i>See</i> Explanation Above	<i>See</i> Explanation Above	<i>See</i> Above	None

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Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN SUPPORT
OF MOTION TO SEAL**

Filed Electronically

Pursuant to Local Civil Rule 5.3(c), Plaintiff NewMarket Pharmaceuticals, LLC ("Plaintiff") hereby submits the Proposed Findings of Fact and Conclusions of Law in support of its Motion to Seal the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.'s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90). Specifically, Plaintiff seeks to seal the select portions of the above documents identified in the Index attached as Exhibit 1 to the Declaration of Joel A. Pisano ("Pisano Decl."). These select portions of the above referenced documents are collectively referred to herein as the

“Confidential Information.” Local Civil Rule 5.3(c) places the burden of proof on the moving party as to why a motion to seal or otherwise restrict public access should be granted.

Specifically, it requires a showing of:

- (1) the nature of the materials or proceedings at issue;
- (2) the legitimate private or public interest which warrants the relief sought;
- (3) the clearly defined and serious injury that would result if the relief sought is not granted; and
- (4) why a less restrictive alternative to the relief sought is not available.

Set forth below are the findings of fact and conclusions of law addressing each of the elements of Local Civil Rule 5.3(c). These findings of fact and conclusions of law support the granting of Plaintiff’s Motion to Seal the Confidential Information identified above:

I. The Nature of the Materials or Proceedings at Issue

A. Findings of Fact

1.) The Confidential Information discloses Plaintiff’s proprietary commercial and business interests, including information relevant to Plaintiff’s partial distribution and license agreement with a third party that the parties maintain in confidence in light of the highly competitive marketplace. Disclosure of this information would result in substantial harm to Plaintiff and/or third party’s ability to compete in the marketplace. (*See* Pisano Decl.¹)

B. Conclusions of Law

2.) This Court has the power to seal where confidential information may be disclosed to the public. Fed. R. Civ. P. 26(c)(1)(G) allows the court to protect materials containing “trade secret[s] or other confidential research, development, or commercial information [.]” upon

¹ “Pisano Decl.” refer to the Declaration of Joel A. Pisano in Support of the Motion to Seal, submitted herewith.

motion by a party, to prevent harm to a litigant's competitive standing in the marketplace. *See Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 889-91 (E.D. Pa. 1981).

This Court has permitted the sealing of confidential business information in other cases. *See, e.g., Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988) ("courts may deny access to judicial records, for example, where they are sources of business information that might harm a litigant's competitive standing."); *Goldenberg v. Indel, Inc.*, No. 09-5202, 2012 U.S. Dist. LEXIS 479, at *8-12 (D.N.J. Jan. 3, 2012) (permitting the sealing of business agreements containing commercially sensitive and proprietary non-public business information and confidential financial information); *Hershey Co. v. Promotion in Motion, Inc.*, No. 07-1601, 2010 U.S. Dist. LEXIS 43322, at *6-10 (D.N.J. May 4, 2012) (protecting from disclosure proprietary and commercially sensitive financial and sales information); *Pfizer, Inc. v. Teva Pharms. USA, Inc.*, No. 08-1331, 2009 U.S. Dist. LEXIS 65031, at *3-4 (D.N.J. July 28, 2009) (granting motion to seal information that constitutes "trade secrets, non-public business and marketing plans, customer lists, [and] research and development."); *Osteotech, Inc. v. Regenerations Tech., Inc.*, No. 06-4249, 2009 U.S. Dist. LEXIS 3943, at *2-4 (D.N.J. Jan. 21, 2009) (protecting from disclosure technical business information regarding proprietary technology); *Bracco Diagnostics, Inc. v. Amersham Health, Inc.*, No. 03-6025, 2007 U.S. Dist. LEXIS 51828, at *18-24 (D.N.J. July 18, 2007) (protecting from disclosure specific confidential sales, costs and profit information); *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 667-68 (D.N.J. 2004) (protecting from disclosure a party's confidential processes, chemical formulas and specifications, and research information).

II. The Legitimate Private or Public Interest Which Warrants the Relief Sought

A. Findings of Fact

3.) The Confidential Information sought to be sealed contains information that Plaintiff and/or third party consider confidential and proprietary information. The Confidential Information is presently confidential and unavailable to the public. Counsel for Plaintiff has submitted Declaration stating that Plaintiff and/or third party have an interest in not publicly disclosing this information and rely on such information to advance their business strategies and to maintain a competitive advantage. (*See* Pisano Decl.).

4.) Plaintiff and/or third party have a continuing interest to ensure that their confidential and proprietary non-public information remains undisclosed. If this information were to become available, Plaintiff and/or third party's competitors could and would likely use that information in the highly competitive marketplace. (*Id.*).

B. Conclusions of Law

5.) Courts have recognized that the presumption of public access is not absolute and may be rebutted. *Republic of the Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 662 (3d Cir. 1991). "Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Littlejohn*, 851 F.2d at 678 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)).

6.) Courts may deny access to and seal a document when it encompasses business information that might harm a litigant's competitive standing. *See Littlejohn*, 851 F.2d at 678 (citations omitted).

7.) Courts in this District have held that the inclusion of trade secrets and other confidential information in documents warrants the sealing of such documents. “A well-settled exception to the right of access is the ‘protection of a party’s interest in confidential commercial information, such as a trade secret, where there is a sufficient threat of irreparable harm.’” *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d at 664 (citation omitted). As such, “[t]he presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.” *Id.* (citations omitted).

III. The Clearly Defined and Serious Injury that Would Result if the Relief Sought Is Not Granted

A. Findings of Fact

8.) In light of its reference to, and disclosure of, non-public information that is otherwise unavailable, the public disclosure of the Confidential Information poses a substantial risk of harm to Plaintiff and/or third party’s legitimate proprietary interests and competitive position. (*See* Pisano Decl.)

9.) Disclosure of such specific highly confidential or confidential information would permit competitors to undercut or otherwise counter Plaintiff and/or third party’s commercial performance. (*Id.*).

10.) Competitors would improperly benefit from the disclosure of Plaintiff and/or third party’s non-public information and would likely use the Confidential Information to unfairly enhance their market positions. (*Id.*).

B. Conclusions of Law

11.) This Court has discretion to balance the factors for and against access to court documents. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 781 (3d Cir. 1994).

12.) Protection of a party's interest in confidential commercial information, such as a trade secret, is a sufficient threat of irreparable harm, and is clearly defined as a serious injury. *See Publicker*, 733 F.2d at 1071; *see also Vista India, Inc. v. Raaga, LLC*, No. 07-1262, 2008 WL 834399, at *3-4 (D.N.J. Mar. 27, 2008).

IV. Why a Less Restrictive Alternative to the Relief Sought Is Not Available

A. Findings of Fact

13.) Once confidential information is disclosed to the public, it can never again be sealed or maintained as private. Moreover, Plaintiff's request to seal the Confidential Information is narrowly tailored to the specific confidential and proprietary information identified above.

14.) The disclosure of the Confidential Information would pose a financial and competitive risk to Plaintiff and/or third party. (*See Pisano Decl.*). Accordingly, the only way to protect this interest is to seal the Confidential Information. Plaintiff has carefully redacted only the specific pages, lines, and words containing the Confidential Information. Plaintiff's request to seal the Confidential Information is narrowly tailored to the specific confidential and proprietary information that Plaintiff has redacted.

B. Conclusions of Law

15.) Under Local Civil Rule 5.3(c)(2), a party seeking to seal documents must meet the fourth prong that a no less restrictive alternative to the relief sought is available. *See Securimetrics, Inc. v. Iridian Techs., Inc.*, No. 03-cv-04394, 2006 WL 827889, at *2 (D.N.J. Mar. 30, 2006).

16.) The sealing of confidential documents and information is an accepted practice in the District of New Jersey. *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653.

Respectfully submitted,

Dated: September 26, 2018

By: s/Joel A. Pisano
Joel A. Pisano
Selina M. Ellis
WALSH PIZZI O'REILLY FALANGA LLP
One Riverfront Plaza
1037 Raymond Blvd, Suite 600
Newark, NJ 07102
(973) 757-1100

Of Counsel
Robert M. Pollaro
John T. Moehringer
CADWALADER, WICKERSHAM & TAFT
LLP
200 Liberty Street
New York, NY 10281
(212) 504-6000

Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

Joel A. Pisano
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Of Counsel
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200 Liberty Street
New York, NY 10281
(212) 504-6000

Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

**STATEMENT IN LIEU OF BRIEF
PURSUANT TO LOCAL
CIVIL RULE 7.1(d)(4)**

Filed Electronically

Pursuant to Local Civil Rule 7.1(d)(4), no brief in support of the motion to seal brought by Plaintiff NewMarket Pharmaceuticals, LLC, for the entry of an Order to Seal is necessary because the factual and legal basis for the relief sought herein are set forth in the Proposed Findings of Fact and Conclusions of Law, and in the Declaration of Joel A. Pisano with Exhibit 1 annexed thereto.

Respectfully submitted,

Dated: September 26, 2018

By: s/Joel A. Pisano

Joel A. Pisano

Selina M. Ellis

WALSH PIZZI O'REILLY FALANGA LLP

One Riverfront Plaza

1037 Raymond Blvd, Suite 600

Newark, NJ 07102

(973) 757-1100

Of Counsel

Robert M. Pollaro

John T. Moehringer

CADWALADER, WICKERSHAM & TAFT LLP

200 Liberty Street

New York, NY 10281

(212) 504-6000

Attorneys for Plaintiff

NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

[PROPOSED] ORDER

Filed Electronically

THIS MATTER having been opened to the Court by the application of Plaintiff NewMarket Pharmaceuticals, LLC (“Plaintiff”) by and through its undersigned counsel, in connection with the Motion to Seal, pursuant to Local Civil Rule 5.3(c) the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff’s September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.’s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90), and the Court having further found that the standards of L. Civ. R. 5.3(c) have been met and support the sealing of the confidential documents and information; and for other and good cause having been shown, the Court hereby finds:

FINDINGS OF FACT

A. Pursuant to Local Civil Rule 5.3(c), Plaintiff moves to seal the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff’s September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.’s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90), relating to Plaintiff and/or

third party's commercially sensitive, proprietary business information, including information relevant to Plaintiff's partial distribution and license agreement with a third party that the parties maintain in confidence in light of the highly competitive marketplace

- B. The select portions of the above documents identified in the index attached as Exhibit 1 to the Declaration of Joel A. Pisano ("Pisano Decl.") that are sought to be sealed are collectively referred to herein as the "Confidential Information."
- C. The Confidential Information contains and/or reflects information that Plaintiff and/or third party have designated as "Confidential."
- D. In particular, the Confidential Information discloses Plaintiff and/or third party's commercially sensitive, proprietary business information.
- E. The legitimate private or public interests which warrant confidentiality are: Plaintiff and/or third party have a legitimate interest in maintaining the confidentiality of their confidential business information. The clearly defined and serious injury that would result if the Confidential Information is disclosed is: Information which was not intended to be seen by competitors would be available for review and potential use against Plaintiff and/or third party. Moreover, competitors (actual and potential) in the highly competitive marketplace, who are not parties to this action would have access to the information. There is no less restrictive alternative to the sealing of the Confidential Information.
- F. Plaintiff has complied with the terms of the Local Civil Rule 5.3(c) by moving to seal the Confidential Information.

CONCLUSIONS OF LAW

A. The Court, having considered this matter pursuant to Fed. R. Civ. P. 78 and Local Civil Rule 5.3, and Plaintiff's submissions in support of the Motion, finds that Plaintiff has satisfied its burden of proving under L. Civ. R. 5.3(c) and applicable case law, that the Confidential Information is highly confidential or confidential and entitled to protection. There exists in civil cases a common law public right of access to judicial proceedings and records. *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192 (3d Cir. 2001) (citing *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988)). The party seeking to seal any part of a judicial record bears the burden of demonstrating that "the material is the kind of information that courts will protect." *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (quoting *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984)). This Court has the power to seal where confidential information may be disclosed to the public. Fed. R. Civ. P. 26(c)(1)(G) allows the court to protect materials containing "trade secret[s] or other confidential research, development, or commercial information [,]" upon motion by a party, to prevent harm to a litigant's competitive standing in the marketplace. *See Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 889-91 (E.D. Pa. 1981). Additionally, courts in this District have held that the inclusion of trade secrets and other confidential information in documents warrants the sealing of such documents. "A well-settled exception to the right of access is the 'protection of a party's interest in confidential commercial information, such as a trade secret, where there is a sufficient threat of irreparable harm.'" *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D.N.J. 2004) (citation omitted). As

such, “[t]he presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.” *Id.* (citations omitted).

- B. Local Civil Rule 5.3(c) places the burden of proof on the moving party as to why a motion to seal or otherwise restrict public access should be granted. Specifically, it requires a showing of: (1) the nature of the materials or proceedings at issue; (2) the legitimate private or public interest which warrants the relief sought; (3) the clearly defined and serious injury that would result if the relief sought is not granted; and (4) why a less restrictive alternative to the relief sought is not available.
- C. The information in Plaintiff’s submission satisfies the standards set forth in Local Civil Rule 5.3(c) and there is no less restrictive alternative to sealing the Confidential Information.

THEREFORE, it is on this ____ day of _____, 2018;

ORDERED as follows:

- 1. The following filings or portions thereof identified in the index attached as Exhibit 1 to Pisano Decl. contain confidential information: (1) The entirety of Exhibit 1 to Plaintiff’s September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.’s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90). The Court further finds that Plaintiff and/or third party would suffer substantial and specific harm, including but not limited to, potential financial damage through the divulgence of such confidential information, that the public interest weighs in

favor of the information remaining confidential and being sealed, and that no less restrictive alternative exists.

2. Therefore, Plaintiff's Motion pursuant to Local Civil Rule 5.3(c) to Seal is **GRANTED**.

SO ORDERED.

HONORABLE TONIANNE J. BONGIOVANNI
UNITED STATES MAGISTRATE JUDGE

Joel A. Pisano
Selina M. Ellis
WALSH PIZZI O'REILLY FALANGA LLP
One Riverfront Plaza
1037 Raymond Blvd, Suite 600
Newark, NJ 07102
(973) 757-1100

Of Counsel
Robert M. Pollaro
John T. Moehringer
CADWALADER, WICKERSHAM & TAFT LLP
200 Liberty Street
New York, NY 10281
(212) 504-6000

Attorneys for Plaintiff
NewMarket Pharmaceuticals, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

CERTIFICATE OF SERVICE

Filed Electronically

I, Joel A. Pisano, hereby certify that, on the date set forth below, I caused true and correct copies of the following documents submitted on behalf of Plaintiff NewMarket Pharmaceuticals, LLC to be electronically filed and served via the Court's electronic filing system on the Office of the Clerk, United States District Court for the District of New Jersey, Clarkson S. Fisher Federal Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey:

- Notice of Motion to Seal;
- Declaration of Joel A. Pisano with Exhibit 1 annexed thereto;
- Proposed Findings of Fact and Conclusions of Law;

- Statement in Lieu of Brief pursuant to L. Civ. R. 7.1(d);
- Proposed form of Order; and
- This Certificate of Service.

I further certify that, on the date set forth below, I caused a true and correct copy of the above documents to be served on all counsel of record via email and electronic filing.

I hereby certify the foregoing statements made by me are true. I am aware that if any of the foregoing statement by me are willingly false that I am subject to punishment.

Dated: September 26, 2018

s/Joel A. Pisano
Joel A. Pisano

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NEWMARKET PHARMACEUTICALS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

VETPHARM, INC., a New York corporation;
DENNI O. DAY; an individual; and
PRELUDE DYNAMICS, LLC, a Texas limited
liability company,

Defendants.

Civil Action No. 3:17-cv-01852
(MAS-TJB)

[PROPOSED] ORDER

Filed Electronically

THIS MATTER having been opened to the Court by the application of Plaintiff NewMarket Pharmaceuticals, LLC ("Plaintiff") by and through its undersigned counsel, in connection with the Motion to Seal, pursuant to Local Civil Rule 5.3(c) the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.'s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90), and the Court having further found that the standards of L. Civ. R. 5.3(c) have been met and support the sealing of the confidential documents and information; and for other and good cause having been shown, the Court hereby finds:

FINDINGS OF FACT

A. Pursuant to Local Civil Rule 5.3(c), Plaintiff moves to seal the following filings or portions thereof: (1) The entirety of Exhibit 1 to Plaintiff's September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.'s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90), relating to Plaintiff and/or

third party's commercially sensitive, proprietary business information, including information relevant to Plaintiff's partial distribution and license agreement with a third party that the parties maintain in confidence in light of the highly competitive marketplace

- B. The select portions of the above documents identified in the index attached as Exhibit 1 to the Declaration of Joel A. Pisano ("Pisano Decl.") that are sought to be sealed are collectively referred to herein as the "Confidential Information."
- C. The Confidential Information contains and/or reflects information that Plaintiff and/or third party have designated as "Confidential."
- D. In particular, the Confidential Information discloses Plaintiff and/or third party's commercially sensitive, proprietary business information.
- E. The legitimate private or public interests which warrant confidentiality are: Plaintiff and/or third party have a legitimate interest in maintaining the confidentiality of their confidential business information. The clearly defined and serious injury that would result if the Confidential Information is disclosed is: Information which was not intended to be seen by competitors would be available for review and potential use against Plaintiff and/or third party. Moreover, competitors (actual and potential) in the highly competitive marketplace, who are not parties to this action would have access to the information. There is no less restrictive alternative to the sealing of the Confidential Information.
- F. Plaintiff has complied with the terms of the Local Civil Rule 5.3(c) by moving to seal the Confidential Information.

CONCLUSIONS OF LAW

A. The Court, having considered this matter pursuant to Fed. R. Civ. P. 78 and Local Civil Rule 5.3, and Plaintiff's submissions in support of the Motion, finds that Plaintiff has satisfied its burden of proving under L. Civ. R. 5.3(c) and applicable case law, that the Confidential Information is highly confidential or confidential and entitled to protection. There exists in civil cases a common law public right of access to judicial proceedings and records. *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183, 192 (3d Cir. 2001) (citing *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677-78 (3d Cir. 1988)). The party seeking to seal any part of a judicial record bears the burden of demonstrating that "the material is the kind of information that courts will protect." *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (quoting *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984)). This Court has the power to seal where confidential information may be disclosed to the public. Fed. R. Civ. P. 26(c)(1)(G) allows the court to protect materials containing "trade secret[s] or other confidential research, development, or commercial information [,]" upon motion by a party, to prevent harm to a litigant's competitive standing in the marketplace. See *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 889-91 (E.D. Pa. 1981). Additionally, courts in this District have held that the inclusion of trade secrets and other confidential information in documents warrants the sealing of such documents. "A well-settled exception to the right of access is the 'protection of a party's interest in confidential commercial information, such as a trade secret, where there is a sufficient threat of irreparable harm.'" *In re Gabapentin Patent Litig.*, 312 F. Supp. 2d 653, 664 (D.N.J. 2004) (citation omitted). As

such, “[t]he presence of trade secrets or other confidential information weighs against public access and, accordingly, documents containing such information may be protected from disclosure.” *Id.* (citations omitted).

- B. Local Civil Rule 5.3(c) places the burden of proof on the moving party as to why a motion to seal or otherwise restrict public access should be granted. Specifically, it requires a showing of: (1) the nature of the materials or proceedings at issue; (2) the legitimate private or public interest which warrants the relief sought; (3) the clearly defined and serious injury that would result if the relief sought is not granted; and (4) why a less restrictive alternative to the relief sought is not available.
- C. The information in Plaintiff’s submission satisfies the standards set forth in Local Civil Rule 5.3(c) and there is no less restrictive alternative to sealing the Confidential Information.

THEREFORE, it is on this 30th day of October, 2018;

ORDERED as follows:

1. The following filings or portions thereof identified in the index attached as Exhibit I to Pisano Decl. contain confidential information: (1) The entirety of Exhibit I to Plaintiff’s September 7, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 88); and (2) VetPharm, Inc.’s September 11, 2018 Letter to the Hon. Michael A. Shipp, U.S.D.J. (D.E. 90). The Court further finds that Plaintiff and/or third party would suffer substantial and specific harm, including but not limited to, potential financial damage through the divulgence of such confidential information, that the public interest weighs in

favor of the information remaining confidential and being sealed, and that no less restrictive alternative exists.

2. Therefore, Plaintiff's Motion pursuant to Local Civil Rule 5.3(c) to Seal is **GRANTED**.

SO ORDERED.



HONORABLE TONIANNE J. BONGIOVANNI
UNITED STATES MAGISTRATE JUDGE

Locket Entry No. 93 is terminated.

Lang, Greer S.

From: Lang, Greer S.
Sent: Wednesday, October 24, 2018 5:38 PM
To: Pollaro, Robert
Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.; Moehringer, John
Subject: RE: VetBridge v. NewMarket

Robert,

Before you file a motion for sanctions, you should look at the rule. I believe it requires you to provide us with that motion in advance and that you may not file it with the court for 21 days. I would also note that filing a frivolous motion for sanctions is itself sanctionable conduct; though it is not our practice to constantly threaten opposing counsel with sanctions as a standard way of doing business.

Moreover, it is not our prerogative to put something under seal. The court will only do that after it is satisfied that the materials are in fact confidential and that there is a sufficient justification for not having the filings made public. I don't think that showing can be made here under any circumstance given your own filing and disclosures. But I accept that you will proceed in the manner you've indicated.

Regards,

Greer S. Lang
Partner
Lathrop Gage LLP
2345 Grand Blvd., Suite 2200
Kansas City, MO 64108-2618
Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001
glang@lathropgage.com

-----Original Message-----

From: Pollaro, Robert [mailto:Robert.Pollaro@cwt.com]
Sent: Wednesday, October 24, 2018 5:29 PM
To: Lang, Greer S.
Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.; Moehringer, John
Subject: Re: VetBridge v. NewMarket

Thanks Greer. I will be filing a motion to compel and for sanctions.

Regards,

Robert

> On Oct 24, 2018, at 6:27 PM, Lang, Greer S. (LG) <glang@lathropgage.com> wrote:

>

> Robert,

>

> I have spoken with our client and we do not agree that the Exclusive Distribution and License Agreement ("Agreement") is confidential under the express terms of that Agreement for the reasons I previously expressed. Additionally, the Agreement contains an integration clause and by its express terms, the Agreement and its Exhibits "supersede all prior oral and written understandings and agreements between the parties."

>

> I would also note the Petition, the original TRO and the Amended TRO quote at length from the Agreement. At the September 14 hearing in the Circuit Court, you did not advise that you considered anything in the Petition or the original TRO to be confidential. Nor did you do so at the time you received the Amended TRO entered by the Court.

>

> Further, you filed a copy of the original TRO with the court in the New Jersey action on September 7 [Doc. 87], after being served with the Petition and the TRO, making the portions of the Agreement quoted in the TRO a matter of public record, clearly indicating that you and your client did not consider the portions disclosed therein to be confidential.

>

> Moreover, at the time you filed your Notice of Removal in the Western District of Missouri on October 5 [Doc. 1], you attached and filed as a matter of public record, complete copies of the foregoing pleadings and orders, again publishing substantial portions of the Agreement that were quoted at length therein.

>

> I would also note that as an exhibit to Mark Ridall's declaration in connection with your motion to transfer that Mr. Ridall disclosed substantive information from the Agreement in ¶¶ 8 and 9; in addition to attaching a copy of a September 9, 2016 letter that again discloses substantive information regarding the terms of the Agreement, your client's efforts to modify the same, and other information pertaining to a number of other matters that are the subject of the Agreement, as well as the status of the same and a budget of actual and projected costs. That information was disclosed and filed as a matter of public record even though that letter and the attachment are marked "Confidential."

>

> Given the foregoing, your client has not treated the Agreement or its terms as confidential, and we do not believe that your client can selectively pick and choose what parts of the Agreement it wants to unilaterally keep confidential and what parts it wants to make public. Having chosen to make those disclosures, we do not think it is possible for your client to now try to un-ring the bell. Accordingly, we are not willing to remove the copy of the Agreement attached as an exhibit to our recently filed motion to set the preliminary injunction hearing.

>

> If you believe we are missing something in our analysis, we would be willing to discuss.

>

> Kind regards,

>

>

>

> Greer S. Lang
> Partner
> Lathrop Gage LLP
> 2345 Grand Blvd., Suite 2200
> Kansas City, MO 64108-2618
> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001
> glang@lathropgage.com

>

> -----Original Message-----
> From: Lang, Greer S.
> Sent: Monday, October 22, 2018 4:02 PM
> To: Pollaro, Robert
> Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.; Moehring, John
> Subject: Re: VetBridge v. NewMarket

>

> Robert,

>

> I responded to your email on Saturday and agreed to discuss tomorrow. I'm not available to talk at 10 am, but can get to a phone at 1pm CST. If that works, I'll send a call in number.

>

> In advance, please advise if the basis upon which you contend Lathrop is disqualified.

>

> Regards,

>

> Sent from my iPhone

>

>

> Greer S. Lang

> Partner

> Lathrop Gage LLP

> 2345 Grand Blvd., Suite 2200

> Kansas City, MO 64108-2618

> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001

> glang@lathropgage.com

>

>

>> On Oct 22, 2018, at 2:31 PM, Pollaro, Robert <Robert.Pollaro@cwt.com> wrote:

>>

>> Greer,

>>

>> We are disappointed that you have not filed corrective papers with the court regarding NewMarkets' confidential business information. In addition to our anticipated motion for sanctions we want to meet and confer on Lathrop Gage's disqualification from this action tomorrow at 10am (central, 11am Eastern). Please circulate a dial-in in advance of the call.

>>

>> Regards,

>>

>> Robert

>>

>>> On Oct 20, 2018, at 11:35 AM, Lang, Greer S. (LG) <glang@lathropgage.com> wrote:

>>>

>>> Robert,

>>>

>>> As indicated in my email, we are willing to discuss.

>>>

>>>

>>>

>>> Greer S. Lang

>>> Partner

>>> Lathrop Gage LLP

>>> 2345 Grand Blvd., Suite 2200

>>> Kansas City, MO 64108-2618

>>> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001

>>> glang@lathropgage.com

>>>

>>> -----Original Message-----

>>> From: Pollaro, Robert [mailto:Robert.Pollaro@cwt.com]

>>> Sent: Saturday, October 20, 2018 10:30 AM

>>> To: Lang, Greer S.
>>> Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.
>>> Subject: Re: VetBridge v. NewMarket
>>>
>>> Greer,
>>>
>>> With all do respect it doesn't matter what you think. NewMarket has expressed their unambiguous position that the agreement is confidential. You are obligated to treat it as such until a court orders otherwise. It makes zero sense that an agreement formed under an NDA would not be itself confidential. I suggest we meet and confer on this topic Tuesday before I file my motion for sanctions and whatever other appropriate remedies for which NewMarket may be entitled.
>>>
>>> Robert
>>>
>>>> On Oct 20, 2018, at 11:03 AM, Lang, Greer S. (LG) <glang@lathropgage.com> wrote:
>>>>
>>>> Robert,
>>>>
>>>> There is no basis to claim that the Exclusive Distribution & License Agreement ("Agreement") is "Confidential Information" and should be filed under seal.
>>>>
>>>> We agreed, as a matter of courtesy, to place the same under seal in the Circuit Court. However, the Agreement itself is not called a "Confidential Agreement" and contains no markings identifying it as "Confidential," as required under ¶12(b) of the Agreement. Further, given your client's unwillingness to agree to a preliminary injunction, consistent with the Amended TRO, we must assume that NewMarket, consistent with its prior actions, intends to misstate to third parties that NewMarket can transfer exclusive worldwide rights (including the Field and Territory held by VetBridge) "free and clear," and to not disclose the Agreement's existence. Placing the Agreement under seal only serves to allow those misstatements to be made and to expose our client's rights to further prejudice.
>>>>
>>>> If you or your client have some basis to claim that the Agreement itself is "Confidential Information," we are willing to reconsider our position or you can file a motion with the Court asking that the same be placed under seal. However, in the absence of an explanation of the basis for the same, we will not agree to place the same under seal.
>>>>
>>>> Regards,
>>>>
>>>>
>>>>
>>>>
>>>>
>>>> Greer S. Lang
>>>> Partner
>>>> Lathrop Gage LLP
>>>> 2345 Grand Blvd., Suite 2200
>>>> Kansas City, MO 64108-2618
>>>> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001
>>>> glang@lathropgage.com
>>>>
>>>> -----Original Message-----
>>>> From: Pollaro, Robert [mailto:Robert.Pollaro@cwt.com]
>>>> Sent: Friday, October 19, 2018 5:27 PM
>>>> To: Lang, Greer S.
>>>> Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.

>>>> Subject: Re: VetBridge v. NewMarket
>>>>
>>>> Thank you. Please tell me that our agreement is not publicly available. If so please rectify immediately.
>>>>
>>>> Have a good weekend.
>>>>
>>>> Robert
>>>>
>>>>> On Oct 19, 2018, at 5:31 PM, Lang, Greer S. (LG) <glang@lathropgage.com> wrote:
>>>>>
>>>>> Robert,
>>>>>
>>>>> Tuesday works for me, as well. How about 10 a.m. CST/11 a.m. EST, or I could do in the afternoon.
>>>>>
>>>>>
>>>>>
>>>>>
>>>>> Greer S. Lang
>>>>> Partner
>>>>> Lathrop Gage LLP
>>>>> 2345 Grand Blvd., Suite 2200
>>>>> Kansas City, MO 64108-2618
>>>>> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001
>>>>> glang@lathropgage.com<mailto:glang@lathropgage.com>
>>>>>
>>>>>
>>>>> From: Pollaro, Robert [mailto:Robert.Pollaro@cwt.com]
>>>>> Sent: Friday, October 19, 2018 4:15 PM
>>>>> To: Lang, Greer S.
>>>>> Cc: Shanks, Brett A.; Stahl, Thomas; Fields, Brian W.
>>>>> Subject: Re: VetBridge v. NewMarket
>>>>>
>>>>> Greer,
>>>>>
>>>>> I am available Tuesday.
>>>>>
>>>>> Please send courtesy copies of the papers you filed today.
>>>>>
>>>>> Thank you,
>>>>>
>>>>> Robert
>>>>>
>>>>> On Oct 19, 2018, at 9:05 AM, Lang, Greer S. (LG) <glang@lathropgage.com<mailto:glang@lathropgage.com>>
wrote:
>>>>>
>>>>>
>>>>> Robert,
>>>>>
>>>>> We are required to have our Rule 26(f) conference to agree the timing of initial disclosures and to develop an
agreed discovery plan and scheduling order no later than October 25 (next Thursday). Please let me know when you can
be available to discuss the same.
>>>>>

>>>>>

>>>>> Greer S. Lang

>>>>> Partner

>>>>> <image9020c1.PNG>

>>>>> Lathrop Gage LLP

>>>>> 2345 Grand Blvd., Suite 2200

>>>>> Kansas City, MO 64108-2618

>>>>> Direct: 816.460.5511 | Mobile: 785.691.6155 | Fax: 816.292.2001

>>>>> glang@lathropgage.com<mailto:glang@lathropgage.com>

>>>>> lathropgage.com<http://www.lathropgage.com/glang>

>>>>>

>>>>> _____

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>>>>> _____

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>>>>> <013_Motion to Set Preliminary Injunction Hearing_Suggestions.zip>

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